

REGISTERED
SPEED POST



F.No. 373/293/DBK/2021-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 29/12/23

Order No. 302/23-Cus dated 29-12-2023 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 249/2021 dated 20.07.2021, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : M/s. BEML Ltd., Bengaluru

Respondent : Pr. Commissioner of Customs, Bengaluru

ORDER

Revision Application No. 373/293/DBK/2021-RA dated 01.10.2021 has been filed by M/s. BEML Ltd., (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 249/2021 dated 20.07.2021, passed by the Commissioner of Customs (Appeals), Bengaluru. Commissioner (Appeals), vide the above-mentioned Order-in-Appeal, has rejected the appeal filed by the Applicant, against the Order passed vide letter C.No. VIII/48/350/2019 Exp Assmt. dated 21.08.2020, by the Deputy Commissioner of Customs (Exports), Airport and Air Cargo Commissionerate, Bengaluru.

2. Brief facts of the case are that the Applicant had imported EMC/EMI Test Equipment Tools vide Bill of Entry No. 5948989 dated 11.04.2018 which were to be used for testing purposes in the Bengaluru Metro Rail Project. The said tools were re-exported on 20.06.2018 vide Shipping Bill No. 5986819 dated 20.06.2018. The Applicant contended that while preparing the documentation for the export the Customs Broker had inadvertently filed a free shipping bill instead of a drawback shipping bill under Section 74 of the Customs Act, 1962. The Applicant filed a claim of refund of customs duty paid for the said equipment paid at the time of importation only to be informed in writing by the department vide letter No. S 74/DBK/BACC/41/2019-20 dated 08.08.2019 that they needed to file a claim for drawback of the customs duty paid in terms of Section 74 of the Customs Act, 1962 and not a refund of customs duty paid under Section 27 of the Customs Act, 1962. Accordingly, the Applicant made a written request to the Respondent vide their letters dated 09.05.2020, 23.05.2020, 06.07.2020 and 14.07.2020 requesting for

conversion of the free shipping bill filed by them as mentioned above into a drawback shipping bill and that request was rejected by the Respondent. Aggrieved the Applicant filed appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed on the grounds that the examination report is dated 21.06.2019 and the application for conversion has been made on 21.09.2019 and the application for conversion/amendment is within the time period specified; that substantive right of the Applicant to file the claim under the correct provisions of the law cannot be denied and the act of filing the claim of refund cannot disentitle the legitimate claim of the applicant; and that procedural infractions are condonable.


4. Personal hearing in the matter was held on 20.12.2023. Sh. Chetan Kumar, Advocate appeared on behalf of the Applicant and submitted that M/s. BEML Ltd. Had imported test equipment in 2018, which was re-exported after use under a free shipping bill instead of a drawback shipping bill. Subsequently they sought conversion of the said Shipping Bill into a drawback Shipping Bill but that was rejected by the LAA and the Appellate Authority on the ground that the application was filed more than 3 months after the LEO date. He submitted that Section 149 does not prescribe any time limit and therefore the Board's Circular is not legal and proper. He quoted a case law of Hon'ble Gujarat High Court in support of his case.

5. The Government has carefully examined the matter. It is observed that the contention of the Applicant that examination report is dated 21.06.2019 is false as it is mentioned in the aforesaid order dated 21.08.2020 that the examination report is dated 21.06.2018 and the LEO date is 21.06.2018 and as such the request for conversion is made by the Applicant is after more than 15 months after LEO date.

6.1 Further, the Applicant has made a reference to Section 149 of the Customs Act, 1962. In this connection it is noted that the words in the Section is "may, in his discretion" which shows that the proper officer may authorize any document to be amended or may not. It is his sole discretion. Secondly, it is also noted in the said Section that " *in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed*". Thus it is crystal clear that the time limit specified in the Board's Circular No. 36/2010 dated 23.09.2010 draws its mandate from the above section.

6.2 Board's Circular No. 36/2010 dated 23.09.2010 has laid down conditions which need to be satisfied before the conversion of a free Shipping Bill into a Drawback Shipping Bill is allowed. One such condition is that the request for conversion has to be made within three months from the date of the Let Export Order (LEO) which was not fulfilled as the request for conversion of the free Shipping Bill was made almost a year after the LEO date.

7. In view of the above, the revision application is dismissed.


29/12/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

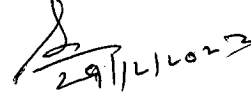
M/s. BEML Ltd.
23/1, 4th Main Road
S.R Nagar, Bengaluru-560027

Order No. 302/23-Cus dated 29-12-2023

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport and Air Cargo Commissionerate, Air India SATS Coolport, 1st Floor, KIAP, Devanahalli, Bengaluru-560300.
3. Sh. Pradyumna G.H, Advocate BVC & Co., 1st Floor, No. 371, 2nd Floor, 8th Main, Sadavhiv Nagar, Bengaluru-560080.
4. PPS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



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